IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR. JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 20461 OF 2006

Between:

M/s. Sri Lakshmi Enterprises,
Dharmapuri Road, Jagtiyal,
Rep. by its Partner Mr. V.Rajeswar Reddy.

Petitioners

AND

Commercial Tax officer,
Jagtiyal.

Respondent

Dated: 9th October, 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The writ petition is filed with a prayer as follows:

> *"…to issue writ of mandamus or any other appropriate writ or order or direction declaring the action of the respondent in passing order provisionally for the*

period from April, 2004 to June, 2004 by proceedings dated 07.09.2006 in G.I. No. 23159/04-05 as arbitrary, contrary to law and without even considering the objections of the petitioner dated 08.11.2004 and further restricting the time for payment of tax to three days, without assigning any good and sufficient reasons and consequently set aside the proceedings of the respondent dated 07.09.2006 is null and void and pass….."

The petitioner is a partnership firm carrying on business in the sales and distribution of soft drinks. On 03.09.2004, the respondent herein issued notice to the petitioner proposing to provisionally assess the tax liability under the A.P. General Sales Tax Act (for brevity the Act) for the period between 1.4.2004 to 30.06.2004. The notice indicates that the respondent proposed to assess the turnover of the petitioner at Rs.81,90,200/- and also indicated that petitioner would be liable to pay Rs.2,17,415/-.

The petitioner replied on 08.11.2004.

The respondent after receipt of the said reply, kept quiet for almost two years and passed provisional assessment order dated 07.09.2006. Apart from anything else, the assessment orders states that the petitioner did not file any objection to the show cause notice dated 03.09.2004.

The petitioner asserted in the affidavit that, in fact, objection is filed on 08.11.2004. When the matter came up

earlier on 28.09.2006, the learned Government Pleader sought time to obtain instructions in this regard.

The allegation of the petitioner that he has already filed objections on 08.11.2004 are not denied. Apart from that, the power to make provisional assessment is contained in Sec.15 of the Act, which reads as follows:

"…15: Provisional assessment of tax:-

(1) The tax payable under this Act for each year may be provisionally assessed in advance during the year in monthly or other prescribed instalments on the basis of estimated or actual turnover of the dealer; and for that purpose a dealer may be required to submit a return or periodical return of estimated or actual turnover and pay the tax on the basis of such return or periodical returns, in such manner as may be prescribed;

(2) ……

From the language of the said section, it is clear that such power is given by the Legislature to assess the tax in advance during the year but not for making provisional assessment two years after completion of the year. In our opinion the present impugned order is not only beyond the authority of the law vested with the author of the order, but sheer abuse of power vested with its author. Consequently, the impugned order is set aside and the writ petition is allowed. No order as to costs.

J.Chelameswar, J.

D.Appa Rao, J.

October 9, 2006
MAS.